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**MEMO ENDORSED**

**p. 3**

September 30, 2010

*Via Regular Mail*

The Honorable Richard M. Berman

United States District Court, Southern District of New York

500 Pearl Street

New York, NY 10007-1312

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 10/5/10

**Re: Westport Insurance Corporation v Hamilton Wharton Group, Inc., et al  
Civil Action No.: 10-CV-2188 (RMB)(THK)**

Dear Judge Berman:

As you are aware, this office represents the third-party defendants IAAC, Inc. ("IAAC") and the Independent Insurance Agents & Brokers of New York, Inc. ("IIABNY") in the above-referenced matter. First, let me apologize to the Court for our inadvertent failure to appear at the recent conference concerning this matter. Both myself and Attorney Robert Grande of this office filed appearances and then sought a pre-motion conference with the court to discuss our proposed motion to dismiss the Third-Party Complaint. Unfortunately, I was traveling on Tuesday and Wednesday of this week and did not know about the conference until I was notified via the ECF system that our proposed motion to dismiss was to be discussed at the conference on September 28<sup>th</sup>. In fact, I received the message when I got off the plane at 10:00 am on the 28<sup>th</sup>, approximately 1 hour after the conference was set to begin. Unfortunately, Attorney Grande is on vacation this week so he too was unaware of the conference. Upon checking the docket report, I

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observed that the conference was originally scheduled for September 22<sup>nd</sup> and then adjourned to the September 28<sup>th</sup>. Needless to say, it should have been caught by my office and someone should have appeared. We apologize for this oversight, and assure the Court it will not happen again.

Later that day I did manage to speak with counsel for the plaintiff, Gregg Weinstock, and Kevin Smith, counsel for the defendant/third party plaintiff The Hamilton Wharton Group Inc. ("Hamilton Wharton") who both informed me of the discussion had at the conference. It is my understanding that Hamilton Wharton will be filing a motion for summary judgment on the ripeness/prematurity issue, and that the Court directed that one joint motion be filed from all defendants who wished to join in on this issue. I was further advised that a briefing schedule was put in place, with the summary judgment motion to be filed by October 19, 2010; opposition papers filed by November 19, 2010, and reply papers submitted by December 3, 2010.

As set forth in our original letter to the Court dated September 22, 2010, it is the intention of the third-party defendants IAAC and IIABNY to move to dismiss the Third-Party Complaint on the ripeness issue pursuant to Fed. R. Civ. P 12(b)(1), and we believe our position is similar to that of Hamilton Wharton. Since the ripeness issue addresses the court's subject matter jurisdiction, we understand that the Court would address that issue first before moving forward with the case. In fact, if the proposed motion for summary judgment by Hamilton Wharton is successful, this would effectively dispose of the third-party action as well.

However, and as identified in our September 22<sup>nd</sup> letter, the third-party defendants will also seek dismissal of the third-party action under Fed. R. Civ. P 12(b)(6) for failure to state claims upon which relief can be granted. Accordingly, while we may be somewhat in agreement

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with Hamilton Wharton on the ripeness issue, we would like the opportunity to present alternate grounds to dismiss the Third-Party Complaint.

Accordingly, we are seeking direction from the Court as to how the third-party defendants should proceed in light of the Court's instructions at the September 28<sup>th</sup> conference. We are ready to file our motion under the briefing schedule identified above is the court so desires, or holding our motion in abeyance until the court resolves Hamilton Wharton's motion for summary judgment. Further, we are available at the Your Honor's convenience to discuss this matter further with the Court and counsel.

Thank you.

Respectfully submitted,



Darren P. Renner, Esq. (DR9237)

DPR

cc: All Counsel of Record (via Regular Mail)  
10621 Follow-Up Letter To Court (9-30-10)

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| Defendants' may jointly<br>file one motion. |  |
| See Tr. of Proceedings,<br>dated 9/28/10.   |  |
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| SO ORDERED:<br>Date: 10/5/10                | Richard M. Berman<br>Richard M. Berman, U.S.D.J. |